

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

MASTER DOCKET

18-md-2865 (LAK)

This document relates to: 19-cv-01869, 19-cv-01868, 19-cv-01866, 19-cv-01871, 19-cv-01800, 19-cv-01810, 19-cv-01813, 19-cv-01870, 19-cv-01792, 19-cv-01808, 19-cv-01815, 19-cv-01922, 19-cv-01928, 19-cv-01803, 19-cv-01929, 19-cv-01931, 19-cv-01783, 19-cv-01798, 19-cv-01788, 19-cv-01818, 19-cv-01812, 19-cv-01791, 19-cv-01801.

STIPULATION AND [PROPOSED] ORDER DISMISSING COUNTERCLAIMS

Plaintiff-Counterclaim-Defendant Skatteforvaltningen (“SKAT”) and Defendant-Counterclaim-Plaintiffs Cavus Systems LLC Roth 401(k) Plan, Hadron Industries LLC Roth 401(k) Plan, Basalt Ventures LLC Roth 401(k) Plan, Starfish Capital Management LLC Roth 401(k) Plan, Crucible Ventures LLC Roth 401(k) Plan, Pinax Holdings LLC Roth 401(k) Plan, Sternway Logistics LLC Roth 401(k) Plan, Eclouge Industry LLC Roth 401(k) Plan, First Ascent Worldwide LLC Roth 401(k) Plan, PAB Facilities Global LLC Roth 401(k) Plan, Trailing Edge Productions LLC Roth 401(k) Plan, Cedar Hill Capital Investments LLC Roth 401(k) Plan, Fulcrum Productions LLC Roth 401(k) Plan, Limelight Global Productions LLC Roth 401(k) Plan, Keystone Technologies LLC Roth 401(k) Plan, Tumba Systems LLC Roth 401(k) Plan, Bareroot Capital Investments LLC Roth 401(k) Plan, Cantata Industries LLC Roth 401(k) Plan, Dicot Technologies LLC Roth 401(k) Plan, True Wind Investments LLC Roth 401(k) Plan, Roadcraft Technologies LLC Roth 401(k) Plan, Fairlie Investments LLC Roth 401(k) Plan and

Monomer Industries LLC Roth 401(k) Plan (collectively, the “Counterclaim-Plaintiffs”), by and through their undersigned attorneys, hereby stipulate and agree as follows:

WHEREAS, on January 23, 2020, the Court issued its Memorandum Opinion (the “Utah Plans Opinion,” No. 18-md-2865 (LAK), ECF No. 261) granting SKAT’s motion to dismiss the counterclaims the Utah Plans (as defined in the Utah Plans Opinion) asserted against SKAT under Utah law for unjust enrichment and promissory estoppel.

WHEREAS, on January 23, 2020, the Court issued its Memorandum Opinion (the “Goldstein Opinion,” No. 18-md-2865 (LAK), ECF No. 262) granting SKAT’s motion to dismiss the counterclaims Goldstein (as defined in the Goldstein Opinion) asserted against SKAT, including, *inter alia*, under New York law for promissory estoppel.

WHEREAS, on February 3, 2020, the Counterclaim-Plaintiffs each filed their responsive pleading to SKAT’s complaints, in which they asserted materially identical counterclaims against SKAT under New York law for unjust enrichment and promissory estoppel.¹

WHEREAS, SKAT otherwise intends to move the Court for an order dismissing the claims raised by Counterclaim-Plaintiffs on grounds materially identical to the bases for the Utah Plans Opinion and Goldstein Opinion, and Counterclaim-Plaintiffs would defend such a motion in a manner materially identical to the defenses raised by the Utah Plans (as defined in the Utah Plans Opinion) and by Goldstein (as defined in the Goldstein Opinion).

NOW THEREFORE, the parties hereby stipulate and agree as follows:

1. See First Letter to Judge Lewis A. Kaplan from Michelle Rice re: Filing of Answers and Counterclaims, No. 18-md-02685, ECF Nos. 264, 264-1-2, 264-4-5, 264-8-11, 264-13-18, 264-20-22 & 264-24-25; Letter to Judge Lewis A. Kaplan from Sharon L. McCarthy re: Filing of Answers to Complaints on Individual Dockets, No. 18-md-02685, ECF Nos. 265, 265-2 & 265-8; Letter to Judge Lewis A. Kaplan from Michael G. Bongiorno re: Filing of Answers, No. 18-md-02685, ECF Nos. 266 & 266-4-5.

1. The Court's Utah Plans Opinion dismissing the Utah Plans' counterclaims for unjust enrichment and promissory estoppel on the ground that they are barred by the act of state doctrine applies to the Counterclaim-Plaintiffs' counterclaims for unjust enrichment and promissory estoppel.

2. The Court's Goldstein Opinion dismissing Goldstein's counterclaim for promissory estoppel on the ground that Goldstein failed to plead a clear and unambiguous promise applies to the Counterclaim-Plaintiffs' counterclaims for promissory estoppel.

3. For the reasons set forth in the Utah Plans and Goldstein Opinions, the Counterclaim-Plaintiffs' counterclaims should be, and by this Order are hereby, dismissed without prejudice to Counterclaim-Plaintiffs' rights to appeal.

4. SKAT shall not be required to file an answer to the Counterclaim-Plaintiffs' counterclaims or otherwise move to dismiss the counterclaims pursuant to Federal Rule of Civil Procedure 12(b).

Dated: New York, New York
February 21, 2020

By: /s/ Michelle A. Rice
(e-signed with consent)
Michelle A. Rice
KAPLAN RICE LLP
142 West 57th Street, Suite 4A
New York, NY 10019
Telephone: (212) 235-0300
Fax: (212) 235-0301
mrice@kaplanrice.com
*Counsel for Defendants-Counterclaim-
Plaintiffs Crucible Ventures LLC Roth
401(k) Plan, Pinax Holdings LLC Roth
401(k) Plan, Sternway Logistics LLC Roth
401(k) Plan, Eclouge Industry LLC Roth
401(k) Plan, First Ascent Worldwide LLC*

By: /s/ Marc A. Weinstein
Marc A. Weinstein
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004-1482
Telephone: (212) 837-6000
Fax: (212) 422-4726
marc.weinstein@hugheshubbard.com
*Counsel for Plaintiff-Counterclaim-Defendant
Skatteforvaltningen (Customs and Tax
Administration of the Kingdom of Denmark)*

Roth 401(k) Plan, PAB Facilities Global LLC Roth 401(k) Plan, Trailing Edge Productions LLC Roth 401(k) Plan, Cedar Hill Capital Investments LLC Roth 401(k) Plan, Fulcrum Productions LLC Roth 401(k) Plan, Limelight Global Productions LLC Roth 401(k) Plan, Keystone Technologies LLC Roth 401(k) Plan, Tumba Systems LLC Roth 401(k) Plan, Bareroot Capital Investments LLC Roth 401(k) Plan, Cantata Industries LLC Roth 401(k) Plan, Dicot Technologies LLC Roth 401(k) Plan, True Wind Investments LLC Roth 401(k) Plan, Roadcraft Technologies LLC Roth 401(k) Plan, Fairlie Investments LLC Roth 401(k) Plan, and Monomer Industries LLC Roth 401(k) Plan

By: /s/ Sharon L. McCarthy
(e-signed with consent)
Sharon L. McCarthy
KOSTELANETZ & FINK, LLP
7 World Trade Center, 34th Floor
New York, NY 10007
Telephone: (212) 808-8100
Fax: (212) 808-8108
smccarthy@kflaw.com

Counsel for Defendants-Counterclaim-Plaintiffs Basalt Ventures LLC Roth 401(k) Plan, and Starfish Capital Management LLC Roth 401(k) Plan

By: /s/ Alan E. Schoenfeld
(e-signed with consent)
Alan E. Schoenfeld
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
alan.schoenfeld@wilmerhale.com

Counsel for Defendants-Counterclaim-Plaintiffs Cavus Systems LLC Roth 401(k) Plan, and Hadron Industries LLC Roth 401(k) Plan

SO ORDERED:

Lewis A. Kaplan
United States District Judge